

FILED

JUNE 19, 2008

**KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

AMARILLO DIVISION

CIRILO GRANJENO GARCIA,	§	
	§	
PLAINTIFF,	§	
v.	§	CIVIL ACTION CAUSE NUMBER
	§	
TEXAS DEPARTMENT OF CRIMINAL	§	2:07-CV-0228-J
JUSTICE ROACH CID PRISON UNIT,	§	
	§	
DEFENDANT.	§	

**MEMORANDUM OPINION AND ORDER
GRANTING DEFENDANT'S MOTION TO DISMISS**

This is a prisoner civil rights lawsuit brought pursuant to 42 U.S.C. §1983. Defendant TDCJ moved to dismiss this case because, in part, the Plaintiff was not incarcerated in the Unit alleged (or any other Texas prison unit) during the time frame stated in Plaintiff's complaint, and for other reasons. No response to Defendant's dispositive motion was timely filed by the Plaintiff, who is represented by counsel.

It appeared to the Court that Plaintiff may have abandoned his claims, so by order filed May 22, 2008, the Court instructed Plaintiff that if he wished to proceed with this lawsuit he must file on or before June 5, 2008, a responsive pleading showing why this case should not be dismissed. That deadline passed with no response from the Plaintiff.

After that notice to the Plaintiff and his failure to show cause why this case should not be dismissed, this case will be dismissed because it appears on the record that the Plaintiff was not incarcerated at Roach Unit or any other Texas prison unit during the time frame stated in Plaintiff's complaint and, in addition, it appears from the record that even if he had been so incarcerated this suit is untimely, having been filed on November 1, 2007 – more than two years after the in-prison

assault allegedly occurred. Therefore the two-year statute of limitations set forth in Texas Civil Practice & Remedies Code §16.003(a) bars Plaintiff's recovery in this suit.

For all of these reasons this case is dismissed with prejudice.

A final judgment of dismissal will be entered in accordance with this opinion and order.

It is SO ORDERED.

Signed this the 19th day of June, 2008.

/s/ Mary Lou Robinson

MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE